



SENATOR RUNNER'S WEEK IN REVIEW

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Railroad Emissions

On June 24, 2005, the California Air Resources Board (ARB) entered into a new Memorandum of Understanding (MOU) with the Union Pacific Railroad Company and the Burlington Northern Santa Fe Railway Company (BNSF). The MOU is a private agreement between the railroads and the ARB to reduce emissions in and around California's major rail yards. The MOU became effective on June 30, 2005.

Background

Class I freight railroads are long distance, line-haul railroads which carry the bulk of the railroad commerce in the nation. The two major Class I railroads that operate in California are Union Pacific and BNSF. In 1998, ARB signed the first MOU with Class I railroads, committing to a complete turn-over of their locomotive fleet in the South Coast air basin by 2010, using the cleanest available technology. This MOU is still in effect today and the MOU signed this June is a supplement to the original agreement.

Who regulates air quality in California?

ARB has authority over mobile sources of air emissions in California while regional air districts, such as the South Coast Air Quality Management District (SCAQMD), are responsible for regulating stationary sources of air emissions, such as refineries or factories.

However, federal law preempts state or local regulation of locomotive emissions. The federal Clean Air Act, declares that "No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act - (A) New engines which are used in construction equipment or vehicles used in farm equipment or vehicles which are smaller than 175 horsepower. (B) New locomotives or new engines used in locomotives." 42 USC Section 7543 (e).

A state can impose air quality controls. However, it is restricted to measures that do not affect the locomotive engines themselves. The state also retains the right to certain police powers regarding the railroads, such as regulating nuisances, traffic disruption, and public safety issues.

An MOU allows the ARB and the railroads to enter into a voluntary agreement that provides for

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higher emissions standards and avoids implementation delays without violating federal law or debate about the state's authority.

The 2005 MOU—What does it do?

The major requirements of the new MOU are:

- Maximum use of state or federal low sulfur diesel in locomotives fueled in California (this is six years earlier than required by federal regulations).
- Statewide visible emissions reduction and repair program to ensure the incidence of smoking locomotives is less than 1% and to ensure repairs within 96 hours.
- Health risk assessments for all major rail yards within 30 months.
- Detailed evaluation of advanced control measures that could reduce diesel particulate emissions up to 90% from uncontrolled levels from applicable locomotives.
- Assessment of remote sensing technology to identify high-emitting locomotives.
- Community and air district involvement in the preparation of risk assessments.

The controversy surrounding the 2005 MOU

Many, including some of the regional air quality districts, dislike the “secret approval process” of this MOU. The MOU was negotiated between the two railroads and the ARB without input from the public or the regional districts. The MOU was then approved by the ARB’s executive officer and not the Board.

Because other agencies, including the local air districts, the Legislature, and other community groups have been working on ways to reduce emissions from locomotives and rail yards, some of those groups feel they were left out of the loop when this MOU was negotiated. In fact, according to SCAQMD, “The proposed MOU further erodes the ability of the legislature, federal, state and local agencies, and others, from attempting to adopt or enforce any air quality requirements pertaining to the MOU.” However, the ARB was not required to bring this issue before the public or any other agency. The ARB has the sole authority over mobile sources of air emissions and negotiated this MOU with that authority. In addition, opening the MOU process to agencies statewide would have seriously delayed the agreement and would not provide the immediate emissions reduction found in the new MOU.

Further, ARB Executive Officer Catherine Witherspoon was authorized to approve the MOU without Board ratification. The executive officer has been delegated all of the powers of the Board and can act without their approval regarding MOUs. Since this issue has become such a controversy, the ARB has added it to the agenda for its July meeting. The Board will consider adoption of a resolution requiring the Board to ratify any MOU that the executive officer has approved.

The second controversial issue with this MOU is the so called “poison pill” provision, which allows the railroads to unilaterally forego the provisions of the new MOU if any other agency (except a federal agency) attempts to enforce any requirements addressing the goal of any program element of the MOU. However, this provision was put in the MOU to ensure that railroads have consistent and uniform regulations statewide. Allowing the state, regional boards, cities, and counties to create an array of different regulations may defeat any emissions improvements that have been achieved and would impose an onerous burden on the railroads since they would need to comply with possibly hundreds of different regulations. However, the MOU does contain a number of provisions that could not be accomplished otherwise because only the U.S. Environmental

Protection Agency could enact such regulations. The MOU also leaves intact all authority and discretion of local governments or governing bodies that existed prior to its enactment.

Other Railroad Related Legislation

AB 1222 (Jones) requires the State Air Resources Board (ARB) to implement a pilot program using remote sensing devices to identify and quantify emissions from locomotives. If AB 1222 passes the Legislature and is signed by the Governor, provisions of that act will serve as a pilot project in lieu of elements in the MOU addressing this issue. If the bill fails passage, if it is altered from its May 27th version, or if it is vetoed by the Governor, the parties agree to meet by no later than January 1, 2006, and discuss how to implement this program element. AB 1222 is currently on Senate Third Reading.

AB 888 (De La Torre) authorizes the South Coast Air Quality Management District to establish a rail yard equipment emission reduction program in its jurisdiction. It was held in the Senate Environmental Quality Committee in June, at the author's request.

SB 459 (Romero) authorizes the South Coast Air Quality Management District to impose a locomotive impact mitigation fee. This fee is to be used for emissions mitigation. SB 459 is currently in the Assembly Transportation Committee.

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